
**APPEALS BOARD
UTAH LABOR COMMISSION**

NANCY M. WOOD,

Applicant,

v.

**EASTERN UTAH BROADCASTING,
WORKERS COMPENSATION FUND,
and EMPLOYERS REINSURANCE FUND,**

Defendants.

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**ORDER ON REMAND FROM
UTAH COURT OF APPEALS**

Case No. 01-0208

Mrs. Wood claims occupational disease benefits for anxiety disorder caused by mental stress from her employment by Eastern Utah Broadcasting. Section 34A-3-106 of the Utah Occupational Disease Act governs such claims and requires, among other elements, that Mrs. Wood establish that her work-related stress is the “legal cause” of her anxiety disorder. The Appeals Board of the Utah Labor Commission exercises jurisdiction over this matter pursuant to order of the Utah Court of Appeals, issued May 24, 2007, directing the Appeals Board to determine whether the stress of Ms. Wood’s employment is the predominant cause of her anxiety disorder, which determination is necessary in order for Ms. Wood to meet § 34A-3-106(2)’s definition of legal causation.

BACKGROUND AND ISSUE PRESENTED

On February 26, 2001, Mrs. Wood filed an application with the Labor Commission to compel Eastern and its insurance carrier, Workers Compensation Fund, (referred to jointly as “Eastern” hereafter) to pay occupational disease benefits pursuant to § 34A-3-106 of the Utah Occupational Disease Act. Specifically, Mrs. Wood claimed that she was permanently and totally disabled as a result of an anxiety disorder caused by mental stress she had experienced while working for Eastern.

Section 106 of the Occupational Disease Act provides occupational disease benefits for work-related “physical, mental, or emotional diseases” if the claimant’s work-related stresses are both the 1) medical cause and 2) legal cause of such disease. After an evidentiary hearing, Administrative Law Judge Hann concluded that the stresses of Mrs. Wood’s work satisfied § 106’s tests for both legal causation and medical causation and awarded benefits to Mrs. Wood. Eastern then asked the Appeals Board to review Judge Hann’s decision. Eastern did not dispute Judge Hann’s determination that Mrs. Wood’s work was the medical cause of her anxiety disorder. Rather, Eastern argued only that Mrs. Wood’s work-related stress was not the legal cause of the illness.

The Appeals Board concluded that Mrs. Wood’s work-related stress was not “extraordinary” within the meaning of § 106(2) and, therefore, could not be considered the legal cause of her anxiety

disorder. On that basis, the Appeals Board reversed Judge Hann's decision and denied Mrs. Wood's claim for benefits. Mrs. Wood sought judicial review, and the Utah Court of Appeals reversed the Board's decision. The Court of Appeals held that the Appeals Board had erred in assessing the "extraordinary" nature of Ms. Wood's work-related stress by comparing that stress to the stresses commonly experienced in Ms. Wood's own profession—advertising sales—rather than the stresses encountered in modern employment and non-employment life in general. The Court of Appeals remanded Ms. Wood's claim to the Appeals Board to apply the correct standard in determining whether Mrs. Wood's work-related stress was "extraordinary."

On remand, the Appeals Board identified the stress that arose "predominantly and directly" from Ms. Wood's work and compared that stress to the ordinary stresses of modern employment and non-employment life. The Appeals Board then concluded that Ms. Wood's work-related mental stress was extraordinary so as to satisfy § 106(2)'s standard for legal causation. The Appeals Board therefore reinstated Judge Hann's original award of benefits to Mrs. Wood.

Eastern requested judicial review of the Appeals Board's decision, and the Court of Appeals reversed that decision. Specifically, the Court of Appeals held that § 106(2)(a)'s definition of legal causation required the Board to determine whether Ms. Wood's work-related stress, when compared to non-work related stress, is the predominant cause of her occupational disease. The Court of Appeals noted that "... in order for Wood's work stress to be predominant under Utah Code section 34A-3-106(2)(a), it must constitute **more** than half of the stress causing her mental injury." *Eastern Utah Broadcasting et al. v. Labor Commission et al.*, 158 P.3d 1115, 1120 (Utah App. 2007) (emphasis added). The Court of Appeals remanded Mrs. Wood's claim to the Appeals Board to make that determination.

FINDINGS OF FACT

As noted above, the only issue remaining in dispute regarding Mrs. Wood's entitlement to occupational disease benefits is whether her work-related stress, when compared to her non-work stress, is the **predominant** cause of her anxiety disorder. The Appeals Board finds the following facts material to that issue.

Mrs. Wood was employed as a radio advertising salesperson for 20 years until March 2000, when she became disabled due to her anxiety disorder. Almost all of her work was for Eastern, which operates radio stations in rural eastern Utah. Mrs. Wood's work for Eastern was demanding. She handled all services for her advertising customers, including making sales calls, writing advertising copy, responding to complaints, billing for services and collecting payment. Eastern also required her to contact each customer at least once a week.

She was also given additional responsibility for a radio shopping show and was designated as Eastern's sales manager, with responsibility to supervise and train other sales staff. In order to fulfill all these duties, Mrs. Wood reported she often worked more than 50 hours per week. She sometimes worked on weekends; she also received business calls and did paperwork and research at home during the early morning and late evening. She carried and monitored two cell phones.

Mrs. Wood's 20-year tenure with Eastern reflected her ability to adequately handle her work duties. Despite the demands of the work, Mrs. Wood performed well and expressed her enjoyment

of the work. For example, as Mrs. Wood was recovering from a back injury in 1995, Dr. Momberger, her treating physician, reported that “[s]he is so happy with her job, that she thinks she can modify it, as she moves around town, and live with her current situation.”

During the years that Mrs. Wood worked for Eastern, she experienced a number of health problems, including a hysterectomy in 1986 which lowered her threshold for experiencing anxiety and resulted in prolonged treatment for anxiety. In her last five years of employment at Eastern, Mrs. Wood experienced increasing health problems. She suffered a work-related back injury in 1995 that resulted in chronic pain for several years. More recently, in 1999, she suffered from viral meningitis which required hospitalization and left her with headaches, extreme fatigue, decreased memory, inability to function and residual emotional lability.

The Appeals Board also notes that Mrs. Wood’s personal life added additional stress. In particular, during this same period of time her husband was injured in a work accident in 1998 and was permanently disabled. Also, one of Mrs. Wood’s adult sons lived in her home. During that time, he was divorced and then remarried. He has children from both marriages, and these children also lived in Mrs. Wood’s home.

The parties have each submitted medical opinions from their respective treating physicians and medical consultants. Mrs. Wood’s doctor and psychologist support her assertion that it was her work at Eastern that was the predominant cause of her stress. On the other hand, Dr. Mooney, a psychologist who examined Mrs. Wood on behalf of Eastern, views Mrs. Wood’s personality and the stresses of her personal life as significant causes of her anxiety disorder. An additional significant opinion comes from the medical panel appointed by Judge Hann to evaluate the medical aspects of Mrs. Wood’s claim. This impartial panel of medical experts does not subscribe to the view of Mrs. Wood’s doctor and psychologist that her work is the predominant cause of her stress. Instead, the panel concluded that Mrs. Wood’s anxiety disorder is caused equally by work and non-work stresses. The Appeals Board finds this opinion particularly persuasive in view of the impartiality and expertise of the panelists, their access to all Mrs. Wood’s medical records and medical opinions, and their personal examination of Mrs. Wood. As the panel determined that Mrs. Wood’s stress was 50% personal and 50% work-related, the panel’s opinion is further evidence that Mrs. Wood’s employment at Eastern did not “constitute more than half of the stress causing her mental injury.” *Labor Commission v. Eastern Utah Broadcasting*, Ibid.

In summary, the Appeals Board has considered all the evidence regarding the sources of stress which led to Mrs. Wood’s anxiety disorder. The Appeals Board notes that Mrs. Wood was capable of handling the duties and stress of her work for many years before the stresses of her personal life dramatically increased. The Appeals Board concludes that Mrs. Wood’s work-related stress, when compared to her non-work stress, is not the predominant cause of her occupational disease.

DISCUSSION AND CONCLUSIONS OF LAW

There is no dispute that Mrs. Wood is permanently and totally disabled as a result of her anxiety disorder, and Eastern does not challenge Judge Hann's original determination that Mrs. Wood's work at Eastern is the "medical cause" of her anxiety disorder. Instead, Eastern has argued that Mrs. Wood's claim for occupational disease benefits should be denied because her work-related stress does not satisfy § 106(2)'s definition of "legal causation."

Section 106(2) (a) provides that "[l]egal causation requires proof of extraordinary mental stress arising predominantly and directly from employment." Previous proceedings before the Court of Appeals and the Appeals Board have established that the foregoing statutory provision requires proof of two separate elements: 1) the existence of "extraordinary" work-related mental stress; and 2) a determination that such work-related mental stress predominates over, or is greater than, any non-work mental stress. Because the Appeals Board has previously determined that Mrs. Wood's work-related mental stress was extraordinary so as to satisfy the first element of legal causation, the Appeals Board now turns to the second element—whether Mrs. Wood's work-related stress predominates over her personal non-work stresses.

On balance, and for the reasons stated in this decision's findings of fact, the Appeals Board has concluded that Mrs. Wood's work-related stress does not predominate over her non-work stresses. The Appeals Board therefore concludes that Mrs. Wood's employment is not the legal cause of her anxiety disorder and that Mrs. Wood is not entitled to occupational disease benefits for that disorder.

ORDER

For the reasons stated herein, the Appeals Board denies Mrs. Wood's claim for occupational disease benefits. It is so ordered.

Dated this 21st day of January, 2009.

Colleen S. Colton, Chair

Patricia S. Drawe

DISSENT

I dissent. With today's order, there now have been six separate written opinions, involving eight separate jurists, attempting to clarify the legal causation standards in emotional distress, occupational disease cases as have been articulated by the Utah Legislature. My preference would be to send this matter back to the Administrative Law Judge for the purposes of having both parties present their evidence and argument as to whether or not Mrs. Wood's work-related stress predominates over her personal non-work stresses.

No party could have anticipated the shifting articulations of the legal causation standard when this case was first presented to the ALJ in 2001. The essential elements of due process require that the parties be on notice as to the basic requirements of law prior to presenting their case. It would require the ultimate stretch of credibility to assume that the parties were aware as to what was needed to satisfy legal causation when this case was first presented in 2001 and 2002.

With today's decision, the majority has accepted the flawed record as presented in 2001-2002 and then cherry picked the facts to support their predisposition toward finding no legal causation. In most workers compensation matters, the Labor Commission has broad discretion in establishing the legal causation standard. The Legislature, by statute, restricted the Commission's traditional broad discretion in emotional distress, occupational disease cases. The majority has accepted this legislative imposed restriction as an invitation to make it virtually impossible to recover worker compensation in emotional distress cases. The majority has done this by exaggerating the extent of Mrs. Wood's non-work stresses. While it is true that she suffered from some illness, the extent and severity of those illnesses were not uncommon. Furthermore, Mrs. Wood received appropriate medical treatment, recovered, and was able to continue on with her work. Likewise, Mrs. Wood's husband's disability and the presence of her son and his family in Mrs. Wood's home have not been shown to have increased Mrs. Wood's stress in any way. To the contrary, the record establishes that Mrs. Wood has enjoyed a long and stable marriage and good support from her children.

Remanding this matter to the ALJ, for a further hearing on the narrow issue of whether Mrs. Wood's work-related stress predominates over her personal non-work stresses, would be consistent with the dictates of the Court of Appeals, the mandates of the Legislature, and requirements of due process.

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals

by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.